

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JILL CARNES,

Plaintiff,

v.

ORDER

C & W TRUCKING, CO., RANDY ERICKSON,
AMERICAN FAMILY MUTUAL INSURANCE
COMPANY, and ERIE INSURANCE EXCHANGE,

22-cv-142-jdp

Defendants.

Jill Carnes is suing Randy Erickson and his former employer C &W Trucking, Co. for the wrongful death of her brother. Carnes also contends that two of these defendants' insurers, American Family Mutual Insurance Company and Erie Insurance Exchange, provide coverage for her injuries. All four defendants have filed motions for summary judgment.

In response to Erickson's motion, Carnes concedes that she cannot recover under Wisconsin's wrongful death statute, Wis. Stat. § 895.04, because she has no pecuniary losses, and an adult sibling has no right to recover for other losses. As a result, she doesn't oppose Erickson's motion for summary judgment, and she says that the case can be dismissed, mooted the remaining summary judgment motions.

The court agrees that Carnes's claim against C & W fails for the same reason as her claim against Erickson, so the court GRANTS the summary judgment motions filed by Erickson, Dkt. 26, and C & W, Dkt. 38. And American Family didn't assert any of its own claims, so the dismissal of Carnes's claims against Erickson and C &W requires dismissal of American Family as well. So American Family is DISMISSED and its motion for summary judgment, Dkt. 33, is DENIED as moot. But Erie asserted a counterclaim and crossclaim that

it has no duty to defend Erickson or C &W, and it has moved for summary judgment on that claim. Dkt. 41. Erie may have until May 23 to show cause why its claim should not be dismissed as moot. If Erie opposes dismissal, Carnes, Erickson, and C & W, may have until May 30 to respond. Briefing on Erie's motion for summary judgment, Dkt. 41, is STAYED pending resolution of the mootness question.

Entered May 9, 2023.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge